Jason Gizzarelli, Esq. (Pro Hac Vice) Karen Kenmotsu, Esq. (Pro Hac Vice) ORIGINA Commodity Futures Trading Commission 1155 21st Street, NW CLEHK, U.S. DISTRICT COURT, Washington, DC 20581 Telephone: (202) 418-5395 (Gizzarelli) Telephone: (202) 418-5383 (Kenmotsu) Facsimile: (202) 418-5523 DEC 1 3 2004 Un 5 Attorneys for Plaintiff Commodity Futures Trading Commission Donald Christie, Esq., State Bar No. 202744 Priority 801 South Rancho Drive, Suite B-2 Send Las Vegas, NV 89101 8 Enter Telephone: (702) 384-2495 Closed Facsimile: (702) 384-2790 9 JS-2/JS-3 Scan Only Attorney for Defendants Paulino Rene Dias, Jr., 10 Krute Corporation and Iceland Management Services, Inc. 11 Michael Jay Green, Esq. 345 Queen Street, Second Floor Honolulu, HI 96813 12 Telephone: (808) 521-3336 Facsime : (808) 966-0347 13 ORIGINAL COURT Attories for Defendant Victor Smith LODGED S.DISTRICT C Š 6 Ó UNITED STATES DISTRICT COURT RICT CENTRAL DISTRICT OF CALIFORNIA Commodity Futures Trading Commission, S C Plaintiff, Case No. CV-03-2659-TJH (VBKx) vs. 20 Paulino Rene Dias, Jr., Consent Order of Permanent 21 Victor Smith, and Krute Injunction and other Equitable Relief Corporation, 22 DOCKETED ON CM Defendants, 23 Iceland Management Services, 24 DEC 1 4 2004 Inc., 25 Relief Defendant. 26 On April 16, 2003, plaintiff Commodity Futures Trading 27

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Commission ("Commission") filed a Complaint against Paulino Rene

Dias, Jr. ("Dias"), Victor Smith ("Smith"), Krute Corporation ("Krute") (collectively, "Defendants") and relief defendant Iceland Management Services, Inc. ("IMS") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2002), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2003). On July 22, 2003, the Court issued a consent order of preliminary injunction against all the Defendants.

I.

CONSENT AND AGREEMENT

To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, Defendants:

- Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief ("Order").
- 2. Affirm that they have read and agreed to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
 - 3. Acknowledge service of the Summons and Complaint.
- 4. Admit that this Court has jurisdiction over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

 5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act.

6 Waive:

- a. the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below in Part II;
- b. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2002) and 28 U.S.C. § 2412 (2002), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 et seq., to seek costs, fees and other expenses relating to, or arising from, this action;
- c. any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any relief; and
 - d. all rights of appeal from this Order.
- 7. By consenting to the entry of this Order, Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact contained in this Order, except as to jurisdiction and venue. However, they agree, and the parties to this Order intend, that the allegations of the Complaint and all of the Findings of Fact made by this Court shall be taken as true and correct and be given preclusive effect without further

proof in any subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants, for the purpose of determining whether their restitution obligation, civil monetary penalty and/or other payments ordered herein are excepted from discharge. Defendants also shall provide immediate notice to this Court and Commission via certified mail, of any bankruptcy filed by, on behalf of, or against them.

- 8. Defendants agree that neither they nor any of their agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect their (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents, servants, employees, contractors and attorneys understand and comply with this agreement.
- 9. Defendants consent to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the

jurisdiction of this Court, and to assure compliance with the Order.

II.

FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act as set forth herein.

Findings of Fact

- 1. Beginning in or about November 2001, Defendants solicited money from Pool participants and prospective Pool participants for, among other things, a commodity pool that would trade commodity futures contracts, and options on commodity futures contracts.
- 2. Between November 19, 2001 and October 16, 2002, Defendants received at least \$2,431,811.17 into the Krute Corporation bank account at Bank of America opened by Dias. The large portion of these funds were from individual Pool participants.
- _3. From December 2001 to June 2002, Dias transferred Pool funds totaling approximately \$405,000 from Krute's Bank of America account to a Krute commodities trading account (acct. no. 64204) at Man Financial, Inc. ("Man Financial").

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- From November 2001 to August 2002, Dias used the Pool futures and options on commodity futures in the S&P 500 and NASDAQ stock indices, as well as cotton and other commodities on whether some states of the same states o funds in the Krute accounts at Man Financial to trade commodity behalf of the Pool.
- Over the lifetime of the four Krute accounts at Man Financial, they have collectively received approximately \$405,000 in deposits, experienced approximately \$185,000 in net trading losses, and had total withdrawals totaling \$175,000.
- Krute also invested Pool funds in a commodity pool named Morganheimer Fund, LLC, which is operated by Brewer Investment Group ("BIG") and trades through an account at Man Financial. At the time Pool funds were placed in the Morganheimer Fund, both Dias and Smith were associated persons ("APs") of BIG, and their duties included soliciting investors for the Morganheimer Fund. In total, Krute deposited approximately \$475,000 of the Pool's money in the Morganheimer Fund.
- Pursuant to Krute's account agreement with the Pool participants, Krute was only entitled to one-quarter of one percent (.25%) per quarter year for management and accounting fees.
- Pool participants also agreed to pay Krute 25% of any profits generated from their investments.

- 10. The account agreement between Krute and the Pool participants did not allow Krute to remove pool funds for business expenses.
- 11. During the course of the Pool's operation from approximately November 2001 to August 2002, the Defendants directed a portion of the Pool's funds to pay business expenses, such as employee salaries and rent, as well as personal expenses, including rent and cash withdrawals.

Conclusions of Law

- 1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.
- 2. Venue properly lies with this Court pursuant to Section 6c of the Act, in that the Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

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This Court has personal jurisdiction over the Defendants, who acknowledge service of the Complaint and consent to the Court's jurisdiction over them.

- 4. The Commission and the Defendants have agreed to this Court's retention of continuing jurisdiction over each of them for the purpose of enforcing the terms of this Order.
- 5. By the conduct described in Section II, Defendants violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(a)(i) and (iii) (2002).

The actions of Dias and Smith were done within the scope of their employment with Krute, and therefore Krute is liable for their violation of Section 4b(a)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

In addition, Defendant Dias, directly or indirectly, controlled Krute and is therefore liable for Krute's violations of Section 4b(a)(i) and (iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

- 6. By the conduct described in Section II, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002) and Section 33.10 of the Commission's Regulations, 17 C.F.R. § 33.10.
- . The actions of Dias and Smith were done within the scope of their employment with Krute, and therefore Krute is liable for their violation of Section 4c(b) of the Act, and Section 33.10 of the Commission's Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

 controlled Krute and is therefore liable for Krute's violations of Section 4c(b) of the Act, and Section 33.10 of the Commission's Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

In addition, Defendant Dias, directly or indirectly,

7. By the conduct described in Section II, Defendants violated Section 40(1)(A) and (B) of the Act, 7 U.S.C. § 60(1)(A) and (B).

The actions of Dias and Smith were done within the scope of their employment with Krute, and therefore Krute is liable for their violation of Section 4o(1) (A) and (B) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

In addition, Defendant Dias, directly or indirectly, controlled Krute and therefore is liable for Krute's violations of Section 4o(1) (A) and (B) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

- 8. By the conduct described in Section II, Defendant Krute violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) by using the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as a CPO.
- 9. By the conduct described in Section II, Krute violated Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Section 4.22 of the Commission's Regulations, 17 C.F.R. § 4.22, by failing to provide the required account statements to Pool participants.

Dias, directly or indirectly, controlled Krute and is therefore liable for Krute's violation of Section 4n(4) of the Act and Commission Regulation 4.22, pursuant to Section 13(b) of the Act.

III.

ORDER FOR PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

- Defendants are permanently restrained, enjoined and prohibited from directly or indirectly
 - a. cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made, or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) and (iii) of the Act.
 - b. in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option transactions, cheating or defrauding or attempting to cheat or defraud other persons; making or causing to be made to other persons false reports or statements thereof, or willfully entering or causing to be entered for other persons false records thereof; and deceiving or attempting to deceive other persons; all in violation of Section 4c(b) of the Act and Regulation 33.10.
 - c. while acting as a CPO or an AP of a CPO, employing a device, scheme or artifice to defraud pool participants or prospective pool participants, in violation of Section 4o(1) (A) of the Act.

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d. while acting as a CPO or an AP of a CPO, engaging in a transaction, practice or course of business which operates as a fraud or deceit upon pool participants or prospective pool participants, in violation of Section 40(1)(B) of the Act.

- Defendant Krute is permanently restrained, enjoined and prohibited from directly or indirectly
 - a. using the mails or instrumentalities of interstate commerce in or in connection with the business of a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act.
 - b. while acting as a CPO, failing to furnish periodic account statements to pool participants, including complete and accurate monthly account statements and an annual certified account statement, in violation of Section 4n(4) of the Act and Section 4.22(a) of the Regulations.
- 3. Defendants are permanently restrained, enjoined and prohibited, from directly or indirectly:
 - a. trading on or subject to the rules of any registered entity;
 - b. engaging in, controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency options account for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
 - c. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14 (a) (9), 17 C.F.R. § 4.14(a) (9) (2004), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a) (9).

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The injunctive provisions of this Order shall be binding against the Defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the Defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with the Defendants.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT DEFENDANTS SHALL PAY RESTITUTION AND A CIVIL MONETARY PENALTY:

Defendants shall be jointly and RESTITUTION: severally liable for restitution to investors in the amount of \$1,950,000. Post-judgment interest, after the date of this Order until the restitution is paid in full, shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Attachment A to this Order includes the names of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Defendants to each of them (not including required interest) and the pro rata distribution percentage by which each investor shall be paid. All payments made pursuant to this Order by Defendants shall be considered restitution payments and dispersed on a pro rata basis until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described below.

- 2. <u>RESTITUTION REDUCTION</u>: Defendants obligations to make restitution under this paragraph shall be reduced by any amounts paid to the investors listed in Attachment A pursuant to any restitution ordered in any other legal proceeding or pursuant to any collateral agreement, subject to the conditions as set forth in paragraph 8 below.
- 3. RESTITUTION AGENT: Restitution payments shall be sent to Daniel Driscoll, the Restitution Agent, at the National Futures Association, 200 W. Madison Street, #1600, Chicago, Illinois 60606, and made payable to the Krute Settlement Fund. The Restitution Agent shall distribute restitution payments to customers on a pro rata basis unless, at his sole discretion, based upon the amount of funds available for distribution, the Restitution Agent decides to defer distribution.
- 4. FROZEN ASSETS: Upon the entry of this Order, the provisions of the Court's July 22, 2003 Consent Order entered against the Defendants continuing a freeze on their assets shall no longer be in effect. Upon being served with copies of this Consent Order after entry by the Court, financial institutions and other entities holding frozen funds or other property previously controlled by Defendants shall tender same to the Monitor. Such funds shall be distributed to the customers in accordance with the restitution plan outlined in Exhibit A.
- 5. CIVIL MONETARY PENALTY: Defendants shall be jointly and severally liable for a civil monetary penalty of \$240,000.00

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plus post-judgment interest. Of this total, Defendant Dias is personally liable for \$43,800. Interest after the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Defendants shall pay such civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Defendant and the name and docket number of the proceeding; Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

- 6. PARTIAL PAYMENTS: Any acceptance by the Commission of partial payment of Defendants' restitution and/or civil monetary obligations, shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- 7. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals

identified in Attachment A is explicitly made an intended thirdparty beneficiary of this Order and may seek to enforce
obedience of this Order to obtain satisfaction of any portion of
the restitution amount which has not been paid by any Defendant,
to ensure continued compliance with any provision of this Order
and to hold Defendants in contempt for any violations of any
provision of this Order.

- 8. COLLATERAL AGREEMENTS: Defendants shall immediately notify the Commission and Restitution Agent if they make or have previously made any agreement with any investor obligating them to make payments outside of this Order. They shall also provide immediate evidence to the Commission and Restitution Agent of any payments made pursuant to such agreement. Upon being notified of any payments made by Defendants to investors outside of this Order, and receiving evidence of such payments, the Restitution Agent will have the right to reduce and offset the Defendant obligation to specified investors and to make any other changes in the restitution distribution schedule that he deems appropriate.
- 9. TRANSFER OF ASSETS: Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, or any investor or until the Restitution Amounts have been paid in full.

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MISCELLANEOUS PROVISIONS

- NOTICES: All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:
 - a. Notice to Commission

Director, Division of Enforcement Commodity Futures Trading Commission 1155 21st St. NW Washington, DC 20581

b. Notice to Defendants Paulino Rene Dias, Jr., Krute Corporation and Iceland Management Services, Inc.

> Donald Christie, Esq. 801 South Rancho Drive, Suite B-2 Las Vegas, NV 89101

c. Notice to Defendant Victor Smith

Michael Jay Green, Esq. 345 Queen Street Second Floor Honolulu, HI 96813

2. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY: This
Order incorporates all of the terms and conditions of the
settlement among the parties. Nothing shall serve to amend or
modify this Order in any respect whatsoever, unless:

(1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

3. <u>SUCCESSORS AND ASSIGNS</u>: This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

- FREEZE ORDER DISOLVED: All prior freeze orders are dissolved.
- 5. <u>JURISDICTION</u>: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief against Dias, Smith, and Krute.

Consented to and approved for	entry by:
Dated: 12/3/04	Janly
	Jason Gizzare 16 - Attorney for Plaintiff Commodity Futures Trading Commission
Defendants Dated:	
	Paulino Rene Dras Jr.

Dated: <u>N-9-8</u>

IT IS SO ORDERED

Dated: 12/12/04

Terry J Hatter Jr.
United States District Judge

3.	SUCCESSORS AND ASSIS	NS: This Order	shall inure to th
beneilt	of and be sinding on t	he parties' succ	essors, assigns,
peria'	penericuaries and admin	istrators.	
4.	FREEZE ORDER DISOLVE	n: All prior fr	eeze orders are

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- 3. MURISDICTION: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief against Diss, Smith, and Krute.

Consented to and approved for entry by:

Dated: // Jason Gizzarelli - Altorney for Plaintiff Commodity Futures Trading Commission

Defendants Dated:

Paulino Rene Dias Gr.

Krute Corporation Inc.

Victor Smith

Dated:
Terry J. Hatter Jr.

United States District Judgs

ATTACHMENT A

Delar,Frank	208 Haviland Ct. Chesapeake, VA 23320	\$50,000.00	2.56%
Denes, Frank	3 East 52nd St. Kansas City, MO 64111	\$100,000.00	5.13%
Dick, Richard	PO Box 27478 7613 Main St. Ralston, NE 68127	\$440,000.00	22.56%
Hagan, John	5209 Old Gallows Way Naples, FL 34105	\$100,000.00	5.13%
Mc Vey, Bill	One Westlake Village Council Bluffs, Iowa 51501	\$475,000.00	24.36%
McFarlen, Carmen	6801 Retreat Ln. Pollock Pines, CA 95726	\$30,000.00	1.54%
Mollett, Henry	20 Norwood Ct. Council Bluffs, IA 51503	\$450,000.00	23.08%
Post, Steve	PO Box 1855 Sisters, OR 97759 Sisters, OR 97759	\$50,000.00	2.56%
Smith, Jim	1901 JFK Blvd #2504 Philadelphia, PA 19103	\$35,000.00	1.79%
Unruh, Dennis	3002 Elm St. Fargo, ND 58102-1705	\$85,000.00	4.36%
Seimers, Laney	1611 Illini Dr. Rockford, IL 61107	\$10,000.00	0.51%
Kanter, Lewis	2412 Ponderosa Dr. North Suite B-111 Camarillo, CA 93010	\$50,000.00	2.56%
Tindle, Camille	4335 Rosemead Pkwy #627 Dallas, TX 75287	\$50,000.00	2.56%
Eggers, Janet	TOTAL	\$25,000.00 \$1,950,000.00	1.28%